84-373

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JUAN CORCHADO JUARBE, Director,
Bureau of Special Investigations of the
Puerto Rico Department of Justice,

Petitioner,

v.

FRANCISCO APONTE PEREZ, Chairman, Judiciary
Committee of the Puerto Rico Senate, and
HECTOR RIVERA CRUZ, Director, Legislative
Investigation Unit of the Puerto Rico Senate,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

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QUESTION PRESENTED

1. Do federal principles of legislative immunity, which the court below applied, prevent the courts from enforcing subpoenas issued by the Executive Branch demanding that legislative officials make available physical and documentary evidence gathered as part of a legislative investigation so that the Executive Branch can investigate and prosecute official misconduct by Executive Branch employees?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

The Director of the Bureau of Special Investigations of the Puerto Rico Department of Justice respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Puerto Rico entered in this case.

OPINIONS BELOW

The opinions of the Superior Court (App. B) and the Supreme Court of Puerto Rico (App. A) are unreported.

JURISDICTION

The Puerto Rico courts concluded that, under the decisions of this Court interpreting the Speech or Debate Clause of the United States Constitution, this suit was barred by legislative immunity. Because the lower courts relied on their interpretation of the federal constitutional standards, this Court has jurisdiction under 28 U.S.C. § 1258(3) to determine the soundness of that interpretation. In any event, under the Puerto Rico Federal Relations Act, 48 U.S.C. §§ 731b *et seq.*, the scope of the legislative immunity under the Puerto Rico Constitution is itself an issue of federal law. For this additional reason, this Court has jurisdiction under Section 1258(3) to review the decision below.

1. This case arises out of the efforts of the Puerto Rico Department of Justice to obtain physical and documentary evidence gathered by a committee of the Senate of Puerto Rico. After the committee refused to produce the evidence in response to subpoenas, the relevant Justice Department official filed suit in the Puerto Rico Superior Court seeking (a) a declaratory judgment that the committee could not properly refuse to comply with the subpoenas and (b) an injunction requiring the production of the subpoenaed material. The Superior Court concluded that the principle of legislative immunity, embodied in Article III, section 14 of the Puerto Rico Constitution, barred the suit. The court relied on this Court's decisions interpreting the Speech or Debate Clause of the United States Constitution as defining the scope of legislative immunity, and it read those decisions to require dismissal of the complaint. (App. 3b-7b) On May 22, 1984, the Puerto Rico Supreme Court affirmed, relying on the lower court's "exhaustive analysis of the applicable Constitutional doctrines." (App. 2a)

This Court has jurisdiction to consider whether the Puerto Rico courts correctly interpreted federal law in determining the scope of legislative immunity under the Puerto Rico Constitution. As the Court only recently reaffirmed, "this Court retains a role when a state court's interpretation of state law has been influenced by an accompanying interpretation of federal law." *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, ___U.S.___, ___, 81 L.Ed.2d 113, 124 (1984); *see Michigan v. Long*, ___U.S.___, ___, 77 L.Ed.2d 1201, 1214 (1983). Here, the Puerto Rico courts treated the Puerto Rico Constitution as having the same meaning and effect as they concluded the United States Constitution would have in comparable circumstances. Because the courts believed that the federal law on legislative immunity would bar the United States Department of Justice from demanding evidence in the custody of a United States Senate committee, they held that the Puerto Rico Constitution similarly barred the complaint. Because the Puerto Rico courts rested their holding on their analysis of a federal question, this Court has jurisdiction "to consider whether it is correct." *Standard Oil Co. v. Johnson*, 316 U.S. 481, 483 (1942). If this Court concludes that the Puerto Rico courts erred in their application of federal law principles, "it has been this Court's practice to vacate the judgment of the state court and remand the case so that the court may reconsider the state law question free of misapprehensions about the scope of federal law." *Three Affiliated Tribes, etc., supra*, 81 L.Ed.2d at 124; *see also Standard Oil Co. v. Johnson, supra*, 316 U.S. at 485.

2. In addition, the Puerto Rico Constitution exists by virtue of the "compact" embodied in the Puerto Rico Federal Relations Act, 48 U.S.C. §§ 731b *et seq.*, and the approval of that constitution by the Congress and the President of the United States. The federal statute

authorizing the adoption of a Puerto Rico constitution, subject to presidential and congressional approval, places certain restrictions on the nature of the Puerto Rico government. The federal statute requires the maintenance of a tripartite government based on principles of separation of powers. *See generally* the discussion in n.3, *infra.* The issues raised by this controversy involve the structure of the government authorized and then approved by federal law.

As the United States District Court for Puerto Rico has recently held, under these circumstances, a dispute between the branches of the Puerto Rico government about their respective powers and immunities is ultimately a matter of federal law. It is, therefore, the duty of "federal courts [to] guarantee separation of powers between the various branches of local government." *Ana Culpeper v. Hernandez Agosto,* Civil. No. 84-1586 (TR), slip op. at 6 (D.P.R. June 25, 1984). The Puerto Rico Federal Relations Act and the subsequent approval process at the very least "federalize[d]" the scope of Puerto Rico legislative immunity by making its proper application an issue of federal law. *Id.,* slip op. at 8.

3. The Puerto Rico Justice Department also contended, in a timely petition for rehearing in the court below, that under the Puerto Rico Federal Relations Act, Congress has made *federal* principles of separation of powers directly applicable to the allocation the powers and immunities between the branches of the Puerto Rico government. The United States District Court in Puerto Rico has so held in two recent cases (*see* n.3, *infra.*).

4. For these three distinct reasons, therefore, this Court has jurisdiction to review the decision below under Section 1258(3) to determine if the issues of federal law have been properly resolved. On June 14, 1984, and June 27, 1984, the Puerto Rico Supreme Court denied timely

motions for reconsideration (App. C & D), and this petition is being filed within the time permitted under 28 U.S.C. § 2101(c) and Supreme Court Rule 20.4.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 6 of the United States Constitution, Article III, Section 14 of the Puerto Rico Constitution and the Puerto Rico Federal Relations Act, 48 U.S.C. §§ 731b *et seq.*, are set forth in Appendix E, *infra.*

STATEMENT

1. On July 25, 1978, police shot and killed two young men on a remote mountain in Puerto Rico known as Cerro Maravilla. Those men were believed to be terrorists who intended to seize and to blow up a large television relay transmission tower located on the mountaintop. The investigations into the events of that day give rise to the controversy presented by this case.

In the years since the incident at Cerro Maravilla, questions have arisen concerning the conduct of the police at the scene and the conduct of the officials involved in investigating those events. At first, it appeared that the charges of misconduct were baseless, but serious evidence recently has surfaced supporting the need for a full investigation into possible criminal wrongdoing. The developments in the case have attracted much public attention, both in Puerto Rico and in the national press. *See, e.g.,* "Is This The Way It Happened . . .," *Life,* September 1984, at 78-84; "10 From Puerto Rico's Police Indicted in '78 Killing of Suspects," *The New York Times,* Feb. 7, 1984, at A20; "Puerto Rico's 'Watergate,' " *Newsweek,* Dec. 12, 1983, at 50; "Two Cases Pit U.S. District Court Against Puerto Rican System," *The Washington Post,* Sept. 18, 1983, at A9. A federal grand jury has

indicted a number of police officers for violating the civil rights of the suspects and for obstructing the federal investigation into the Cerro Maravilla affair. Allegations have been made implicating the conduct of various other government officials as well.

Two branches of the Puerto Rico government have conducted investigations into the events at Cerro Maravilla and their aftermath. The investigation by the Senate of Puerto Rico began in 1981 and has included hearings televised throughout Puerto Rico. Respondent Francisco Aponte Perez is the Chairman of the Committee conducting the investigation and respondent Hector Rivera Cruz is the staff director of that investigation. The investigators have collected evidence not made public in the committee's hearings, including documents voluntarily provided by executive departments of the Puerto Rico government.

In December 1983, the Bureau of Special Investigations of the Puerto Rico Department of Justice (hereafter "BSI") assumed jurisdiction over the administrative and criminal investigations into the serious charges of misconduct that had been made against the public officials allegedly involved in the incident at Cerro Maravilla and the alleged cover-up that followed. The BSI is empowered by statute to investigate charges of criminal conduct, corruption or abuse of authority by public officials in the course of discharging their official dutires. *See* 3 L.P.R.A. § 138(c).

In an effort to fulfill BSI's mandate and the executive branch's constitutional duty to enforce the criminal laws, the Director of the BSI requested that evidence which the Senate investigation had developed be turned over to BSI. This evidence requested was of three types:

1. Documents and other physical evidence that the executive branch itself had furnished to the committee to aid it in its investigation.

2. Evidence, including statements, obtained from third-party witnesses.

3. Documents and other physical evidence prepared or developed within the committee.

When the chairman and the committee staff ignored informal requests, the BSI Director, exercising his statutory authority, 3 L.P.R.A. § 138(f), issued subpoenas to respondents Aponte and Rivera again asking that they produce all documentary and physical evidence relevant to the criminal investigation into the events at Cerro Maravilla. They refused to comply with the subpoenas, asserting that, under the doctrine of legislative immunity, they did not have to respond to any request to produce evidence needed in a criminal prosecution.

The BSI Director then petitioned the Puerto Rico Superior Court (a) for a declaratory judgment that the doctrine of legislative immunity does not support the refusal, and (b) for an injunction requiring compliance with the subpoena. On a motion to dismiss, the Superior Court held that both officials were entitled to legislative immunity, and the petition was dismissed. In reaching this conclusion, the Superior Court rested principally on its interpretation of this Court's decisions in *United States v. Brewster,* 408 U.S. 501 (1972), *Gravel v. United States,* 408 U.S. 606 (1972), and *Eastland v. United States Servicemen's Fund,* 421 U.S. 491 (1975) (hereafter *"Brewster"*, *"Gravel"*, and *"Eastland"*). Going beyond anything this Court held in those cases, the court concluded that no distinction can be made between a request for personal testimony from a legislative official about his legislative acts and a request for physical evidence in the custody of legislative officers. The court cited a single law review article as its only authority to support this proposition. The court then reasoned that because (1) the Senate committee's investigation itself was within the proper sphere of legislative activity, and (2) the evidence re-

quested was "the product" of the investigation, the Director's "request for us to apply the coercive power of the Court to the contents of the Subpoenas is improper." (App. 10b)

On appeal, the Puerto Rico Supreme Court affirmed, explaining that the Superior Court "based its findings on an exhaustive analysis of the applicable Constitutional doctrines." (App. 2a). Although allowing the BSI to obtain copies of evidence that the committee had elected to make public, the Supreme Court concluded that, with regard "to the evidence that has not been made public, it is not proper that we intervene in an area of recognized parliamentary immunity. Article 3, Sec. 14, Constitution, Commonwealth of Puerto Rico." (App. 5a) [1]

REASONS FOR GRANTING THE WRIT

The court below has misapplied the federal standard of legislative immunity and thereby has upset the proper balance of authority between the branches of government. In conflict with this Court's decisions and those of the federal courts of appeal, the decision below has interpreted federal precedents as creating an absolute barrier to obtaining evidence in the possession of a legislative officer that is crucial to a criminal investigation, merely because the officer acquired the evidence in the course of a legislative investigation. This Court should not leave standing such a misconstruction of the federal principle of separation of powers.

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[1] Some confusion arose in the Puerto Rico Supreme Court as to whether BSI sought all evidence relating to the Cerro Maravilla investigation, or simply the material that had already been made public. As the BSI Director attempted to make clear, and the majority decision seemed to recognize, the BSI does not seek only the materials previously disclosed publicly, but all evidence in the committee's possession, including, of course, the material that the executive branch itself had furnished to the committee.

I

A. The principle of legislative immunity embodied in the Speech or Debate Clause is more limited in scope than the court below concluded.

> "The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators." *Brewster, supra,* 408 U.S. at 507.

The essence of the protection is that a legislator and "those intimately associated" with him cannot be forced to submit to "the harassment of hostile questioning," *In re Grand Jury Investigation Into Possible Violations of Title 18, United States Code,* 587 F.2d 589, 597 (3d Cir. 1978), concerning matters which are "an integral part of the deliberative and communicative processes by which Members participate in . . . matters which the Constitution places within the jurisdiction of either House." *Gravel, supra,* 408 U.S. at 625; *see also United States v. Johnson,* 383 U.S. 169, 181-82 (1966) (hereafter "*Johnson*").

The Founding Fathers, however, did not erect an impregnable wall between the executive and legislative branches when they fashioned the Speech or Debate Clause. The Clause was lifted almost verbatim from the English Bill of Rights of 1689. *See Johnson, supra,* 383 U.S. at 177-78. That provision, in turn, represented the culmination of the long struggle to prevent the King from punishing members of Parliament for exercising their legislative responsiblities. *See* Reinstein & Silverglate, *Legislative Privilege and the Separation of Powers,* 86 Harv. L. Rev. 1113, 1120-35 (1973); *Johnson, supra,* 383 U.S. at 182. As this Court has recognized, therefore, the

Clause "does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs but not a part of the legislative process itself." *Brewster, supra,* 408 U.S. at 528. Legislative immunity is not a privilege of secrecy but a protection against the use of legislative acts against officials protected by the immunity. As one court has put it, the privilege "is not one of nondisclosure but of nonevidentiary use." *In re Grand Jury Proceedings (Cianfrani),* 563 F.2d 577, 584 (3d Cir. 1977); *accord United States v. Helstoski,* 576 F.2d 511, 523 (3d Cir. 1978), *aff'd,* 442 U.S. 477 (1979). Thus, of fundamental importance here, the Clause does not "immunize Senator or aide from testifying at trials or grand jury proceedings involving third-party crimes where the questions do not require testimony about or impugn a legislative act." *Gravel,* 408 U.S. at 622.[2]

The history and purpose of the Clause demonstrate, therefore, that it does not apply where the executive does not seek to hold a legislator or his aide accountable for legislative conduct. Where, as here, there was no threat of "intimidation by the executive and accountability before a possibly hostile judiciary," *Johnson, supra,* 383 U.S. at 181, the legislator and his aide cannot claim an absolute right to withhold cooperation that every other citizen who possesses relevant evidence would owe in a criminal investigation of third parties. As this Court in *Brewster* explained:

> "Our speech or debate privilege was designed to preserve legislative independence, not supremacy. Our task, therefore, is to apply the Clause in such a way as to insure the independence of the legislature without altering the historic balance

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[2] There is no question but that the courts have full authority to compel a legislator or his aide to obey a subpoena if the request falls outside the sphere of the Speech or Debate Clause. *See, e.g., Doe v. McMillan,* 412 U.S. 306 (1973); *Powell v. McCormack,* 395 U.S. 486 (1969).

of the three co-equal branches of Government." *Brewster, supra,* 408 U.S. at 508.

Legislative immunity must be accommodated with the functioning of the other branches. The critical issue in determining whether legislative immunity prohibits compelling cooperation is whether "relief could be afforded without proof of a legislative act or the motives or purposes underlying such an act." *Gravel, supra,* 408 U.S. at 621; *see also Johnson, supra,* 383 U.S. at 185.

The BSI here is not investigating alleged legislative misconduct, but is simply seeking evidence which happens to be in legislative custody in order to investigate and prosecute official misconduct by employees of the executive branch. The BSI subpoenas do not seek to inquire into any legislative acts or the motivations that lay behind any such acts. Even though the evidence happens to be in the possession of legislative officials, no legislator or legislative aide is threatened with hostile questioning.

This Court has previously recognized and applied the distinction between compelling personally incriminating oral testimony that a person has a privilege not to give and requiring the same person to produce physical evidence such as documents that he has in his possession merely because of his relationship to an organization. *See, e.g., Bellis v. United States,* 417 U.S. 85 (1974); *United States v. White,* 322 U.S. 694 (1944). Similarly here, the legislator's constitutional protection against being held accountable for his legislative acts is not implicated by a request that he furnish evidence in connection with an investigation of wrongdoing by third-parties who are not legislative officers. In addition, just as documents that come into an attorney's hands are not thereby transformed into privileged material, the mere fact that a legislative employee obtains custody of third-party material should

not place the evidence beyond the reach of a duly authorized criminal investigation. *See, e.g., Fisher v. United States,* 425 U.S. 391, 402-04 (1976); *United States v. Omohundro,* 619 F.2d 51, 53 (10th Cir. 1980) (*per curiam); Bouschor v. United States,* 316 F.2d 451, 457 (8th Cir. 1963) (per Blackmun, J.).

It would be anomalous, indeed, to treat evidence that happens to be in the possession of legislative officials as absolutely beyond the reach of compulsory process when this Court has ruled that even the President's own constitutionally based executive privilege would have to yield to the criminal justice system's need for tangible evidence in the President's custody. *United States v. Nixon,* 418 U.S. 683, 707 (1974). Such a disparity in responsibilities is not the law. *See In re Grand Jury Proceedings Into Possible Violations Of Title 18, United States Code, supra,* 587 F.2d at 597 (grand jury subpoena to Clerk of the U.S. House of Representatives for toll telephone records of a Member of Congress held not barred by legislative immunity).

The Puerto Rico courts misunderstood the principles that define the scope of legislative immunity. They made no effort to identify those principles and apply them to the facts of this case. Instead, the trial court merely noted that there had been a proper legislative investigation and that the evidence sought was the product of that investigation. The Puerto Rico Supreme Court embraced this "analysis". It made no difference to the courts below that no questioning would occur, no inquiry into legislative proceedings was being conducted, no impugning of legislative activities was being threatened. It made no difference that the executive branch sought to carry out its own constitutional duties to enforce the laws, not against legislators themselves, but against third parties. The decisions below read into federal law a much broader legislative immunity than actually exists.

B. If some qualified privilege exists that requires a weighing of the respective interests of the legislative and executive branches before the courts enforce an investigative subpoena, *cf. United States v. Nixon, supra,* 418 U.S. at 707, the subpoenas here should have passed scrutiny.

The BSI Director is seeking, in part, documents that had originated in the executive branch of government. Far from undermining the legislative process, the enforcement of this request would facilitate legislative investigations, since it is unlikely that the executive officials would cooperate so willingly in future legislative inquiries if they lack the power to retrieve documents when they are needed to discharge the legal and constitutional duties of the executive branch.

Nor would turning over to law enforcement authorities evidence originating with third parties interfere significantly with a legislature's deliberative process. It is unlikely that the legislature's ability to obtain cooperation from third parties would be significantly diminshed if it must later cooperate with the executive branch; the legislature's own subpoena power remains an effective investigatory tool. *See* 2 L.P.R.A. §§ 153-154a (providing for criminal penalties and civil enforcement of Puerto Rico legislative subpoenas).

Finally, although documents created by the committee and its staff present the most difficult category, they too should be subject to production for the purpose of facilitating a major criminal investigation, at least in the face of only a generalized claim to privilege. *See United States v. Nixon, supra.* The legislators and their staff must support a claim of privilege with a particularized showing of the bases and need for such protection. *See Benford v. American Broadcasting Cos.,* 98 F.R.D. 42, 45 (D. Md. 1983) (subpoena enforced against Clerk of House of Representatives for legislative documents sought in private civil suit), *rev'd on other grounds,* 733 F.2d 634 (4th Cir. 1984).

The Puerto Rico courts made no such careful inquiry and analysis. Instead, they concluded that legislators and their employees have an absolute constitutional right to refuse all cooperation with a criminal investigation. The doctrine of legislative immunity, however, is part of, and is properly analyzed by reference to, the principle of separation of powers. *See Johnson, supra,* 383 U.S. at 178; Brewster, *supra,* 408 U.S. at 508. A correct understanding of the doctrine of separation of powers establishes the dividing line between (a) the power of the executive branch to compel cooperation of legislators and their aides with a duly authorized criminal investigation and (b) the sanctuary wherein legislators and their aides are beyond the reach of executive authority. A practical rather than mechanical application of "separation of powers" requires a more careful analysis of the interests to be protected than the Puerto Rico courts applied in this case. This Court should correct the misapplication of federal law by the courts below and reaffirm the balance of power between the executive and legislative branches in their discharge of their respective responsibilities.[3]

II

This case concerns one of the fundamental issues of United States constitutional law: the proper allocation of

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[3] The Puerto Rico courts here sought to apply federal principles governing legislative immunity and separation of powers without explaining why they were doing so. In fact, as the federal district court for the District of Puerto Rico has explicitly held, the Puerto Rico Federal Relations Act, 48 U.S.C. §§ 731b *et seq.*, and the subsequent process by which the Congress and the President approved the Puerto Rico Constitution, mean that when the "implication of the separation of powers doctrine embodied" in that Act is at issue in a case, it "federalize[s] this controversy" and federal principles of law must be applied. *Ana Culpeper v. Hernandez Agosto, supra,* slip op. at 8; *see also Martinez Acosta v. Hernandez Agosto,* Civil No. 84-1441 (JP) (D.P.R. June 21, 1984) (applying standards of Speech or Debate Clause of United States Constitution to determine whether Puerto Rico legislators are immune from suit).

(footnote continues)

power between the branches of the government. The need to strike a balance between autonomy and responsibility, between independence and supremacy, between defiance and cooperation is a crucial task for this Court, in its effort to preserve the equality of the institutions exercising governmental authority.

The Puerto Rico courts did not heed this Court's warning that "these exceptions to the demand for every man's evidence are not lightly created nor expansively construed." *United States v. Nixon, supra,* 418 U.S. at 710; *accord Webster v. Sun Co.,* 731 F.2d 1, 4 (D.C. Cir. 1984) ("grants of absolute immunity ought to be interpreted narrowly to serve only the purposes justifying the immunity"). The decision below threatens to upset the balance by expanding the legislator's immunity far beyond the requirements of separation of powers or of this Court's previous decisions. The executive branch of the Puerto Rico government needs these materials to pursue a critically important investigation of possible criminal wrongdoing by government officials. The decision below seriously impedes that investigation and threatens the executive's ability to pursue its investigation successfully.

(footnote continued)

The Compact with Puerto Rico requires Puerto Rico to maintain a "republican form of government," the hallmark of which is the separation of powers among coordinate branches of government. *See, e.g., Buckley v. Valeo,* 424 U.S. 1, 119 (1976); *United States v. Nixon, supra,* 418 U.S. at 705-14; *Duncan v. McCall,* 139 U.S. 449, 461 (1891); *Minor v. Happersett,* 88 U.S. (21 Wall.) 162, 175-76 (1875); *see also The Federalist* No. 9, at 72; No. 47, at 301; No. 51, at 321; No. 66, at 401 (New American Library Ed. 1961). The Puerto Rico Constitution in fact adopted the same separation of powers that is embodied in the United States Constitution, and it was approved by the National Government because, *inter alia,* it adopted the same tripartite system. *See* House Rep. No. 1832, 82nd Cong., 2d Sess. (1952), *reprinted in* 1952 U.S. Code Cong. & Ad. News 1892, 1898, 1900, 1902. Under these circumstances, federal law requires that Puerto Rico (and similarly established "commonwealths") must adhere to federal principles of separation of powers. *See Springer v. Government of the Philippine Islands,* 277 U.S. 189 (1928); *Camacho v. Civil Service Commission,* 666 F.2d 1257 (9th Cir. 1982) (Commonwealth of the Northern Marianas).

Legislative officials have been permitted to withhold physical and documentary evidence for no reason other than the personal status of the custodians of the evidence. Average citizens cannot but question their own responsibility to aid the criminal justice system when legislators and their functionaries can so easily deny the investigators access to crucial evidence.

The court below denigrated the importance of criminal investigations in a way that conflicts with attempts by this Court and other courts to strike a proper balance between the criminal process and other governmental processes. *See, e.g., In re Grand Jury Investigation into Possible Violations of Title 18, United States Code, supra* (legislative immunity does not permit blanket refusal to produce congressional telephone records to grand jury); *In re Grand Jury Proceedings (Cianfrani), supra* (executive's interest in pursuing investigation of mail fraud and tax evasion outweighed legislator's interest in confidentiality of payroll records); *cf. In re Grand Jury Subpoena, May, 1978 at Baltimore,* 596 F.2d 630 (4th Cir. 1979) (*per curiam*) ("interest in broad disclosure of evidence to a grand jury" outweighed state's concern for secrecy of tax records); *In the Matter of the Special April 1977 Grand Jury,* 581 F.2d 589 (7th Cir.) (*per curiam*), *cert. denied,* 439 U.S. 1046 (1978) (grand jury's interest in hearing all relevant evidence outweighed whatever remote likelihood that "worthwhile conduct" would be deterred by production of campaign records, employee rosters, travel records and telephone bills by state official).

Since the court below interpreted this Court's precedents as effectively giving members of the United States Congress the power to frustrate a federal criminal investigation, it is especially appropriate for this Court to restore the proper constitutional balance.

CONCLUSION

Certiorari should be granted.

Respectfully submitted.

NELSON MARTINEZ ACOSTA
Secretary of Justice
San Juan, Puerto Rico

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September 1984.

APPENDIX A

OPINION OF THE PUERTO RICO SUPREME COURT

Unofficial Translation

IN THE SUPREME COURT OF PUERTO RICO

No. 0-84-266

JUAN CORCHADO JUARBE, *et al.*
Petitioner-Appellant

v.

HON. FRANCISCO APONTE PÉREZ, PRESIDENT OF THE JUDICIARY COMMISSION, SENATE OF P.R., *et al.*
Defendant-Appellee

APPEAL PROCEEDING FROM THE SUPERIOR COURT, SAN JUAN PART, HON. ABNER LIMARDO, Judge

---

Declaratory Judgment, Injunction, etc.

RESOLUTION

In San Juan, Puerto Rico, this 22nd day of May, 1984.

I.

Juan Corchado Juarbe, Director of the Bureau of Special Investigations of the Department of Justice of the Commonwealth of Puerto Rico (BSI), appeals the dismissal decreed on March 16, 1984, by the Superior Court, San Juan Part, of his petition for a declaratory judgment

that defendants Francisco Aponte Pérez, President of the Judiciary Commission of the Senate of Puerto Rico, and Héctor Rivera Cruz, Director of the Senate's Legislative Investigation Unit, may not refuse to produce as it was required of them by subpoena "all evidence given to the Judiciary Commission related with the happenings occurring on July 25, 1978, on Cerro Maravilla", including "sworn statements of all the agents of the public order that in any way participated in said happenings, documentary and demonstrative evidence and any transcripts, minutes or records that may be relevant to this matter; as well as any other documentation or declaration related to these facts."

The appealed court based its findings on an exhaustive analysis of the applicable Constitutional doctrines.

In his appeal, Corchado Juarbe alleges the following errors:

> "A. The request to the defendants-appellees to submit to the petitioner-appellant the evidence given publicly by the Judiciary Commission of the Senate of Puerto Rico as part of its investigation on the happenings of July 25, 1978 on Cerro Maravilla does not constitute an undue interference by the Executive Branch in the actitvities of the Legislative Branch protected by the doctrine of parliamentary immunity expressed in Section 14 of Article 3 of the Constitution of the Commonwealth of Puerto Rico.
>
> B. The petitioner appellant BSI has the power and the obligation to request the documents in controversy so that it may comply with the ministerial duties that the law imposes upon it and the Judiciary Commission of the Senate must surrender the same to the appellant.

C. The controversy in this case is justiciable and does not constitute a matter that may be classified as a political question; therefore ordering the production of the requested evidence does not run against the principle of separation of power on which rests our Constitutional order."

This being the case, on May 4th, defendants-appellees Aponte Pérez and Rivera Cruz requested that the appeal be dismissed on the grounds that Corchado Juarbe for the first time limited his request to the evidence made public by the Judiciary Commission, which scope was different to that of the subpoena originally served which before required "all evidence given to the Judiciary Commission." They also expressed the following:

"The position assumed by the petitioner-appellant is frivolous because he is requesting a remedy from the wrong parties. If it is true as it is expressed in his brief, that all that the appellant wishes to obtain is the evidence that was made public, all that he has to do is request a copy of the documents filed in the Senate Secretary's Office. In said documents, appear all the evidence that was made public before the Judiciary Commission.

The defendants-appellants are neither the custodians nor the persons authorized to surrender copies of said documentation since this is the exclusive function of the Secretary of the Senate. Nor do they have any objections that a copy of said documents be surrendered to appellant after following the corresponding procedure if in fact, as it is alleged, all that is requested is the evidence that has been made public."

Subsequently, petitioner-appellant Corchado Juarbe, in his Opposition to the Motion to Dismiss, indicated before the Court below and during the reconsideration

requested that he had previously clarified "the scope of his request."

He reiterated his petition by pointing out that "the Executive Branch has the ministerial duty of presenting those criminal charges that are proper after the happenings on Cerro Maravilla to the courts." Furthermore, in his Motion Supplementing his Opposition to the Motion to Dismiss filed May 10, 1984, he stated:

> "It is clear that petitioner has a right to obtain all the evidence that is in possession of the Senate Judiciary Commission, the petitioner-appellant has always requested all the evidence in possession of Senate Judiciary Commission as it appears from the petition and the letter dated January 10, 1984, signed by the petitioner, which reads in part.
>
> > 'To those effects, we respectfully request from that Honorable Commission its cooperation in order to obtain all the evidence given said Commission which is pertinent to our investigation. That includes sworn statements given by the agents of the public order, documentary and demonstrative evidence, and any transcripts, minutes or records that are relevant to this matter.' Appellants' Brief, page 5.
>
> The defendants-appellees have acquiesced to the production of that part of the evidence which has been made public by the Judiciary Commission as it more fully appears from its Motion to Dismiss filed before this Honorable Court on May 4, 1984. Therefore, there is no controversy about the same. Nevertheless, it is unquestionable that the District Attorney's Office would be in an infinitely better position to fully

carry out its ministerial duties of filing the charges that are proper before the courts and successfully prosecuting those persons who have committed crime in this case if they could count on all the evidence which includes not only the sworn statements and other documentary evidence, but also real and demonstrative evidence, we reiterate or prayer to this Honorable Court to order the Judiciary Commission of the Senate to surrender to the petitioner-appellant all evidence that is in its possession and is the product of the Senatorial investigation is has conducted." (Emphasis supplied.)

II

The briefs and arguments of the parties before this Court dispel any doubt on the scope of the request. In respect to the evidence that has not been made public, it is not proper that we intervene in an area of recognized parliamentary immunity. Article 3, Sec. 14, Constitution, Commonwealth of Puerto Rico. In regard to the evidence given publicly to the Senate Judiciary Commission, the Superior Court's judgment is not an obstacle to obtaining the evidence directly through the administrative process. There is no controversy as to this matter.

In light of the above, this case is dismissed.

So ordered by the Court and certified by the General Secretary. Associate Justice Mr. Rebollo López concurs in the result because he understands that the appeal has become academic after appellant limited his request to the evidence made public by the Judiciary Commission of the Senate of Puerto Rico.

Lady Alfonso de Cumpiano
Secretary

APPENDIX B

OPINION OF THE PUERTO RICO SUPERIOR COURT

Unofficial Translation

IN THE SUPERIOR COURT OF PUERTO RICO

SAN JUAN SECTION

CIVIL NO. 84-619(902)

JUAN CORCHADO JUARBE, Director of the Bureau of Special Investigations of the Department of Justice of the Commonwealth of Puerto Rico,
Plaintiff

vs.

HON. FRANCISCO APONTE PEREZ, President, Senate Judiciary Commission, Senate of Puerto Rico, and HECTOR RIVERA CRUZ, ESQ. Director, Legislative Investigation Unit of the Senate of Puerto Rico, etc.
Defendants.

DECLARATORY JUDGMENT AND INJUNCTION

JUDGMENT

Juan Corchado Juarbe, Director of the Bureau of Special Investigations of the Department of Justice of Puerto Rico ("BSI") requests a Declaratory Judgment in which he asks us to decide that Defendants Francisco Aponte Pérez, President of the Senate Judiciary Commission, and Héctor Rivera Cruz, Director of the Legislative Investigation Unit of the Puerto Rico Senate, may not refuse to produce the information he has required of them by subpoenas dated 19 and 25 of January, 1984, to wit:

"all evidence given to the Judiciary Commission related with the happenings of July 25, 1978 on Cerro Maravilla including sworn statements of all the agents that in any way participated in said happenings, documentary and demonstrative evidence and any transcriptions, minutes on proclamations that may be relevant to this matter; as well as any other documentation or statements related to these facts."

The petitioner alleges and proves by the documents accompanying the petition that during December of 1983 and under the authority of Law No. 38 of July 7, 1978, the "BSI" acquired jurisdiction in the criminal and adminstrative investigation related to the conduct of the public officials that participated in the Cerro Maravilla happenings; that after ignoring and later refusing to produce the evidence that was required through the subpoenas, the Defendants were summoned to appear before him, bringing with them said evidence under the penalty of contempt in accordance with Law No. 3 of March 18, 1954.

Further, he alleges that the documents requested from the Defendants "must be produced because they are public documents which have been requested for legitimate purposes in the aforementioned investigation." He adds that his purpose "is not that the Defendants appear to testify, but that they produce the public documents that were requested;" that their conduct in refusing to produce the documents "is one contrary to the public policy of the Commonwealth of Puerto Rico and is at odds with justice;" he cites from the case of *Peña Clos, infra,* that "neither the legislative bodies or their appendices nor the officials of the Executive Branch may become the judges of their own powers." Finally, he prays that we order the Defendants to turn over to him the requested documents.

The Defendants filed a Motion to Dismiss on March 1984, and, pursuant to rule No. 8.4(a) of the Rules of Civil Procedure, the case was submitted.

We decide that the request made to the Defendants that is informed in the Petition, constitutes an undo interference by the Executive Branch with the activities of the Legislative Branch, which is protected by the Doctrine of Parliamentary Immunity contained in Section 14 of Article No. 3 of the Constitution of the Commonwealth of Puerto Rico. The Defendants, as Senator and Officer, respectively, of the Senate of Puerto Rico, are protected by said immunity and the Petitioner is barred from requesting the expressed information.

Section 14 of Article 3 of the Constitution, establishes legislative immunity as follows: "Every member of the legislative Assembly shall enjoy parliamentary immunity for his votes and expressions in either of the Chambers or in any of its Commissions." The theoretical basis for this protection is found in the Doctrine of Separation of Powers to bar attempts by one branch of the government to usurp, intervene or in any other way obstruct the carrying out of the duties of another branch of government. Tribe, *American Constitutional Law,* 1978, p. 291, 294-95. It constitutes a mechanism for the preservation of the independence and, therefore, the integrity of the legislative process. André Bauriou, *Derecho Constitucional e Instituciones Políticas,* Ediciones Ariel 1971, p. 236-37; Reinstein and Silverglate, *Legislative Privilege and the Separation of Powers,* 86 Harv. L. Rev. 1113. It is of substantive nature and operates for the benefit of the independence of every legislator or legislative official in relation to the activities carried out within their legislative functions. *U.S. vs. Brewster,* 408 US 501, 33 L. Ed. 2d 507, 92 S Ct. 2531; *Gravel vs. U.S.,* 408 US 606, 33 L. Ed. 2d 583, 92 S Ct. 2614; *Eastland vs. United States Servicemen's Fund,* 421 US 491, 44 L. Ed. 2d 324, 95 S Ct. 1831.

And once the legislative character of the activity which is the subject of the intervention by another branch of government is demonstrated, the immunity confers protection of an absolute character and it is not subject to question in any other proceedings. Tribe, *supra,* p. 292-93.

The expressed legal principles have been the object of ample judicial recognition both in the local as well as the federal spheres. The historical development and the judicial and political justification of the legislative immunity clause was eloquently expressed in *In Re Rodríguez Torres,* 106 DPR 698, 705-720, that reaffirmed said doctrine as "a precious bastion of the integrity and independence of the legislative process" that "the courts have resisted to significantly narrow its reach and much less invade it." (p. 707). In the United States Constitution the parliamentary immuniy clause appears at the end of Section 6 of Article No. 1, as follows: "... and for any speech or debate in either House, they (members of Congress) shall not be questioned in any other place." It has been interpreted amply to meet its purpose of preserving the independence and intergrity of the legislative process. The cases of *Brewster, Gravel* and *Eastland* are significant decisions of the Supreme Court of the United States in relation to the legislative immunity clause. The different pronouncements in these cases concern us, to wit: *Brewster* decides that the parliamentary immunity clause reaches every activity that clearly forms part of the legislative process; it forbids that a legislator be questioned or render an account for his legislative actions or his motivations in relation to the same. (408 US 512-516, 33 L Ed. 2d 518, 519, 520). It concluded the legislative immunity clause must be viewed as sufficiently ample to insure its purpose of maintaining the traditional independence granted to the legislative bodies and sufficiently narrow to prevent excesses of those who attempt to

erode the autonomy that is generated by the parliamentary process through the usurpation of the legislative powers. (408 US 516, 33 L Ed. 2d 520). It added that the clause was designed for both the personal benefit of the legislator as well as to protect the integrity of the legislative body through the preservation of the independence of individual legislators. (408 US 507, 33 L Ed. 2d 515).

In *Gravel,* the Court recognizes that the protection constitutes a policy in itself addressed to procure the effective functioning of government by maintaining the autonomy of its three branches; it rejected the intimidation of the Executive in the legislative process as an element that threatens the balance of powers. (408 US 616 33 L Ed. 2d 597). It explains the even though the actions of the legislators in legislative committees are subject to review in the varied circumstances that comprise the judicial review of the legislation itself, their actions carried out within the framework of the legislative sphere cannot be the basis of criminal or civil actions. (408 US 624 33 L Ed. 2d 603). Although it concluded that the heart or nerve of the immunity is that which is verbally expressed in the deliberative process, it discarded a literal interpretation of the clause so that it may extend also to reports, resolutions and in general, to all things that are produced in the legislative sessions; and to everything that is an integral part of the process for which the legislators take part in commissions and those for the consideration, approval or rejection of legislative measures or related to matters within the jurisdictional spheres which the Constitution confers on the Chambers. (408 US 625, 33 L Ed. 2d 602). It added that the privilege granted by the immunity clause protects, in addition to the legislator, legislative personnel in their actions within the legislative spheres; it recognized that the modern legislative process cannot be conceived without the intervention of persons

that assist as counselors in the legislative task and for parlimentary prerogatives they are treated as legislators; as their alter egos. (408 US 616, 617, 624 33 L Ed. 2d 597).

Eastland points out that as a fundamental function of the parliamentary expressions immunity clause, is the prevention of Executive intimidation over the legislators and the possible accounting of these before a hostile judiciary. (421 US 502 44 L Ed. 2d 336). It establishes that the same protects not only against the consequences of a litigation but also of the burden that is imposed on the legislator and the energy and time it requires for him to defend it. (421 US 503 44 L Ed. 2d 313). It reiterates that once the legislative and legitimate character of the actions over which the Executive intends to intervene is demonstrated, that is they are within the legitimate legislative spheres, they are protected by parliamentary immunity of an absolute character. Thus, always whenever there is an attempt to question or inquire into a legitimate legislative activity, the protection of said immunity will come into operation to prevent the members of legislative assemblies or their personnel from being questioned or interrogated in any forum about their legislative activities or motivations in relation to the same. (421 US 491, 501, 503, 525, 44 L Ed. 2d 336-338). It was expressed additionally, in this case, that the power to approve legislation inherently includes the power of investigation and the compiling of information respecting the conditions over which the legislation is interested in affecting; without which the parliamentary body could not efficiently and intelligently legislate.

Like *Gravel,* the *Eastland* decision extended the protection of parliamentary immunity to legislators and those officers that assist them in the legislative commissions since they are considered alter egos of the former. (421 US 507, 510 44 L Ed. 2d 339, 341). It advised of the

limited authority of the Courts to inquire into the motivations of legislative actions of legislators that act within the Constitutional framework that comprises the wide sphere of their legitimate functions and that the wisdom of the legislative focus on matters are not opened to judicial veto. (421 US 506, 509 44 L Ed. 2d 338, 341). In relation to the nature of the investigatory powers through legislative commissions and the narrow margin of judicial power to penetrate into the motivations of legislative actions carried out within the sphere of the constitutional mandate conferred on the chambers by the legislative power, see in addition to *Eastland, Banco Popular, Liquidador vs. Corte,* 63 DPR 66, 79-80, and *Peña Clos vs. Cartagena,* 83 JTS 83 (1983) at pages 3302 and 3303.

Colón Berrios vs. Hernández Agosto, 716 F 2d. 85, 90, 91 (1983) from the First Circuit, decided that the senatorial investigation is an essential ingredient of the legislative process. It sustain the absolute character of the immunity of legislators against judicial actions when they are acting within the sphere of their legislative functions. Acknowledging the liberal interpretation criteria that is required by the legislative immunity clause, it is inmaterial that the request made to the legislator or legislative officer be made for the production of his oral testimony, documents or other evidentiary material that is in his possession. If the request represents questioning or inquiring over the legislative activities, the parliamentary immunity will operate in relation to his personal appearance as well as to the production of documents or the required evidentiary material. *D. Kaye,* Congressional Papers, Judicial Subpoena and the Constitution, 24 UCLA L. Rev. 523. In this respect, this author expresses, at page 551.

> "[I]n terms of the clause's wording and policy, there is no reason to distinguish between a subpoena for a personal testimony and one for

> documentary evidence. Both forms of discovery may threaten freedom of speech or debate in demanding out-of-chambers explanations of purely legislative activities. Consequently, subpoenas duces tecum, like subpoenas ad testificandum, have been held to constitute 'questioning' within the meaning of the speech or debate clause."

We are obliged to dispense urgent disposition to this case in light of its nature. *Eastland,* supra, p. 511 n. 17. The legitimacy of the investigation that is being carried on by the Senate through its Judiciary Commission in relation to the occurrences on Cerro Maravilla on 25 July 1978, is unquestionable. We take judicial notice of Senate Resolution No. 91, dated 23 February 1981, that orders said Commission to carry out "an investigation on everything that occurred on Cerro Maravilla on the 25th of July, 1978, in relation to the deaths of Carlos Soto Arriví and Arnaldo Darío Rosado" and "once terminated . . . submit to the consideration of the Senate, the legislation that it recommends as a result of the factual determinations and knowledge acquired during the investigation", *Peña Clos,* supra, p. 3299. In that case, as well as in *Colón Berríos,* supra, page 87, *In Re San Juan Star Company,* 662 F 2d. 108 (1st Cir. 1981) and others heard in this Court, they have acted in full knowledge of the legitimate character of said investigation. Independently, the petition does not question it and so, it will enjoy a presumption of legitimacy. *U.S. vs. Rumely,* 345 US 41 97 L Ed. 2d 770. Likewise, the information required from the Defendants is the product of their work in said investigation carried out within the legitimate area of their functions as President of the Judiciary Commission and Director of the Senate Legislative Investigations Unit. It contains their legislative actions protected by the described interpretation of this concept within the parliamentary immunity clause of Section 14, Article 3 of the Puerto Rico Constitution. On

the other hand, we conclude that Petitioner's request to Defendants that is contained in the Subpoenas dated 19 and 25 January, 1984, represents an inquiry or questioning of their actions in that investigation as the immunity concept has been expressed. Under these circumstances, they are protected by this immunity and the Petitioner is absolutely barred from requiring their appearance or producing the information contained in said subpoenas.

What we now decide in not incompatible with the expression contained in *Peña Clos* that "neither the legislative bodies or their branches nor Executive officers can become judges of their own powers." The same is linked in that case with that other notion that the reach of the legislature's right to information through its power of investigation, although ample, is not absolute. Its relation to the case before us refers to the legal authority within which the Senate Judiciary Commission conducts the investigation on Cerro Maravilla; that is to say, the legitimacy of this legislative activity. But we have already indicated that once the legitimate and legislative character of the questioned activity has been demonstrated parliamentary immunity operates in an absolute mode. The Petition does not allege that the referred investigation constitutes an arbitrary use of the investigative power of the Senate without a legislative purpose or that it is contrary to citizen's prerogatives contained in the Bill of Rights, that is, outside of a constitutional framework. Therefore, in light of the remedy we have given, it is unnecessary that we make an analysis of the interests that was necessary in *Peña Clos.* In light of the effect we have given in this case to the parliamentary immunity clause, we have also found unnecessary to make the selective and separate examination that the Court raised in *Peña Clos* if the method to weigh values now substitutes or not the traditional manner in every kind of clash between the infomation required by Legislative and Executive Branches.

By virtue of the above, we reiterate that Petitioners request for us to apply the coercive power of the Court to the contents of the Subpoenas is improper. Granting the Petition would represent approving a direct intervention with the integrity and independence of the legislative process and would make the Judiciary Commission as an investigative body that assists the Senate in those proceedings, a fragile and vulnerable organism. If it were granted, it would, with all probability, irreparably stop the investigation on the happenings on Cerro Maravilla assigned to said Commission and the purposes of the assignment. We are dealing with an impermissible intervention to the balance of the separation of powers that is backed by the public policy that is obtained through the Doctrine of Parliamentary Immunity which would be converted into a mere rhetorical instrument of little value.

In view of the above, the Petition is dismissed.

In San Juan, Puerto Rico, March 16, 1984.

Abner Limardo
Judge

APPENDIX C

DENIAL OF THE FIRST MOTION FOR RECONSIDERATION

Unofficial Translation

IN THE SUPREME COURT OF PUERTO RICO

No. 0-84-266

JUAN CORCHADO JUARBE, ETC.,
Appellant,

VS.

HON. FRANCISCO APONTE PEREZ, ETC.
Appellee.

Declaratory Judgment and Injunction

ORDER

SAN JUAN, PUERTO RICO, JUNE 14, 1984

The motion for reconsideration is denied.

As agreed by the Court and certified by Madam General Secretary.

Lady Alfonso-Cumpiano
Secretary General

APPENDIX D

DENIAL OF THE SECOND MOTION FOR RECONSIDERATION

Unofficial Translation

IN THE SUPREME COURT OF PUERTO RICO

No. 0-84-266

APPEAL FROM THE SUPERIOR COURT, SAN JUAN SECTION

JUAN CORCHADO JUARBE, ETC.,
Appellant

VS.

HON. FRANCISCO APONTE PEŕEZ, ETC.,
Appellee

Declaratory Judgment and Injunction

ORDER

SAN JUAN, PUERTO RICO, JUNE 27, 1984

To the motion for reconsideration denied. Follow what has been decided.

As agreed by the Court and certified by Madam Secretary.

Lady Alfonso-Cumpiano
Secretary

APPENDIX E

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 6 of the United States Constitution provides, in part:

> "The Senators and Representatives shall . . . be privileged from Arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."

Article III, Section 14 of the Puerto Rico Constitution provides:

> "No member of the Legislative Assembly shall be arrested while the house of which he is a member is in session, or during the fifteen days before or after such session, except for treason, felony or breach of the peace. The members of the Legislative Assembly shall not be questioned in any other place for any speech, debate or vote in either house or in any committee."

The Puerto Rico Federal Relations Act, 48 U.S.C. § 731b *et seq.*, provides, in relevant part:

> "Fully recognizing the principle of government by consent, sections 731b-731e of this title are now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption." 48 U.S.C. § 731b.
>
> "Sections 731b-731e of this title shall be submitted to the qualified voters of Puerto Rico for acceptance or rejection through an island-wide referendum to be held in accordance with

the laws of Puerto Rico. Upon the approval of said sections, by a majority of the voters participating in such referendum, the Legislature of Puerto Rico is authorized to call a constitutional convention to draft a constitution for the said island of Puerto Rico. The said constitution shall provide a republican form of government and shall include a bill of rights." 48 U.S.C. § 371c.

"Upon adoption of the constitution by the people of Puerto Rico, the President of the United States is authorized to transmit such constitution to the Congress of the United States if he finds that such constitution conforms with the applicable provisions of sections 731b-731e of this title and of the Constitution of the United States.

"Upon approval by the Congress the constitution shall become effective in accordance with its terms." 48 U.S.C. § 731d.